

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MEDGRAPH, INC.,

Plaintiff,

DECISION AND ORDER

09-CV-6610L

v.

MEDTRONIC, INC.,

Defendant.

This Court granted summary judgment in favor of defendant Medtronic, Inc. on June 29, 2015. Defendant has filed an appeal from that decision to the United States Court of Appeals for the Federal Circuit.

The parties have exchanged correspondence with each other and the Court regarding the recent *en banc* Federal Circuit decision dated August 13, 2015 in *Akamai Techs., Inc. v. Limelight Networks, Inc.*, 2015 WL 4760450. The parties differ as to the impact of that decision on this Court's summary judgment decision.

Since this Court has already extensively discussed the prior *Akamai* decision, *see Medgraph, Inc. v. Medtronic, Inc.*, __ F.Supp.3d __, 2015 WL 3938253 at *7-*8 (W.D.N.Y. 2015), which has now been vacated, the *en banc* decision obviously bears upon the issues in this case and deserves this Court's attention. It seems best, therefore, that if defendant seeks relief based on the *en banc* *Akamai* decision, it should file an appropriate motion.

As a part of that filing, defendant should set forth its position as to whether this Court has jurisdiction to entertain such a motion in light of the pending appeal from the Court's summary judgment decision. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1992) ("The

filings of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal”); *Retirement Bd. of the Policemen’s Annuity and Ben. Fund of the City of Chicago v. Bank of New York Mellon*, 775 F.3d 154, 159 n.4 (2d Cir. 2014) (“The filing of a notice of appeal divests a district court of jurisdiction over the issues presented in the appeal”) (citing *Griggs*, 459 U.S. at 58).

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
August 26, 2015.